

**Before the
Federal Communications Commission
Washington D.C. 20554**

In the Matter of

Petition for Declaratory Ruling to Clarify)	
Provisions of Section 332(c)(7)(B) to Ensure)	
Timely Siting Review and to Preempt under)	WT Docket No. 08-165
Section 253 State and Local Ordinances that)	
Classify All Wireless Siting Proposals as)	
Requiring A Variance)	

REPLY COMMENTS OF THE CITY OF NEW YORK

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The City of New York (the City) enthusiastically endorses and supports the comments, points and arguments made by the City of San Antonio in this proceeding. The City writes in particular to emphasize to the Commission the importance of the issue discussed in footnote 28 on page 18 of San Antonio's comments, and to respond to the comments in this proceeding of NextG Networks, Inc. (NextG).

NextG seems to imply that, but avoids (with one exception) acknowledging that, its requests to place its antennas on public property, including public rights-of-way, are requests for "the placement, construction or modification" of "personal wireless facilities".¹ If NextG's requests do not fall within this language then any determination in this proceeding as an interpretation or application of Section 332(c)(7) (B) (i), (ii), (iii) or (iv) would be irrelevant to NextG's facilities and its comments would fall outside the scope of this proceeding. If, on the other hand, NextG's requests *are* requests for "the placement, construction or modification" of "personal wireless facilities" then, Section 332(c)(7)(A), which precludes the application of Section 253 to such requests, would provoke the dismissal or vacation of NextG's Section 253 litigations with respect to such requests. NextG cannot have it both ways. It can argue that its requests are covered by Section 332(c)(7)(including subsections (A) and (B)), or that they are not, but it cannot argue both.

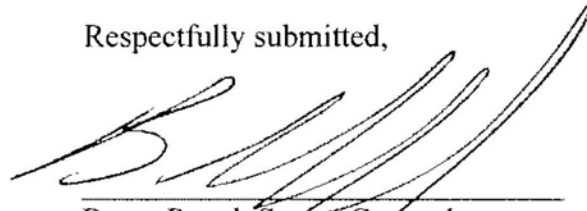
As a substantive matter, as San Antonio's comments point out at page 18, footnote 28, the conflation of local zoning decisions with local decisions regarding the use of publicly-owned or managed property makes no sense as a matter of law or policy. Issues that local governments must deal with when location on public property is being sought are entirely different than when location on private property is being sought.

The location of antennas on private property involves two steps for an entity seeking to install an antenna: (1) negotiation (which may take weeks, months or years and which may be ultimately successful or unsuccessful) with the private property owner, who operates with no federal restrictions on its discretion to allow or not allow the placement of antennas on its property or the terms and conditions of such placement (including compensation for the use of the property), and (2) any necessary land use approval of the installation. When an entity, including NextG, approaches local government for the use for antennas of property the local government owns or manages, the local government has both roles to play. To suggest that any standards or experience applicable to situations in which the local government role is limited to the second role, should also apply to situations in which local government is exercising both roles, defies any legal or policy logic. Indeed, one can argue that NextG is here merely seeking to "game the system" in its favor in its effort to present its approach of relying on local government owned or managed locations for antenna sites as preferable to those who rely on private

¹ The exception to NextG's attempt to imply without expressly acknowledging that its requests are for "the placement, construction or modification" of "personal wireless facilities" occurs in footnote 8 at page 9 of its comments. Here NextG argues that attempts to "regulate" RF radiation from NextG's "DAS" facilities would be preempted by Section 332(c)(7)(B)(iv). But that is only true if NextG's requests to place such facilities are for the placement, construction or modification of "personal wireless facilities", which under 332(c)(7)(A) are not subject to Section 253.

property locations. In effect, NextG is looking for a federally-mandated but unfunded subsidy by local governments to support its installation methodology, to the detriment of those who use private property to locate antennas. That would be neither fair to NextG's competitors nor to a local government's citizens and taxpayers, who are entitled to the same rights and privileges with respect to antenna siting on public property as those to which private property owners are entitled with respect to antenna siting on their property. The City urges the Commission to, in its resolution of this proceeding, act fully in accordance with the compelling arguments made by San Antonio and other municipal entities in their comments, including, to the extent it issues any conclusions other than simply denying CTIA's petition, maintenance of the distinction between zoning actions affecting private property and local government actions with respect to publicly owned and managed property.²

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Bruce Regal', written over a horizontal line.

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² NextG also egregiously mischaracterizes its franchise negotiations with the City. The City offered NextG the identical, wholly non-discriminatory, franchise it offered to all other entities who sought to install antennas on City sidewalks; six entities accepted this franchise but NextG refused to sign it for over two years (ostensibly because the franchise would "prohibit or effectively prohibit" NextG from providing its service). Within months of finally signing the franchise the City offered, after a more than two year delay by NextG, NextG had installed hundred of its antennas on City rights of way, belying NextG's claim that the franchise would prohibit it from providing service.